

ST: Nonademption of Specific Devises.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE NONADEMPTION OF SPECIFIC DEVICES IN CERTAIN
CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 31 of the General Statutes is amended by adding a
new section to read:

**"§ 31-42.3. Nonademption of specific devises; unpaid proceeds of sale, condemnation, or
insurance; sale by conservator, guardian, or attorney-in-fact.**

(a) In the absence of a finding of the testator's intent to the contrary, a specific
devisee has a right to specifically devised property in the testator's estate at the testator's death
and to any of the following as applicable:

(1) Any balance of the purchase price, together with any security agreement,
owed by a purchaser at the testator's death by reason of sale of the
property.

(2) Any amount of a condemnation award for the taking of the property
unpaid at death.

(3) Any proceeds unpaid at death on fire or casualty insurance on or other
recovery for injury to the property.

(4) Any property owned by the testator at death and acquired as a result of
foreclosure, or obtained in lieu of foreclosure, of the security interest for a
specifically devised obligation.

(5) Any real property or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real property or tangible personal property to the extent it is established by clear and convincing evidence that the acquired property was intended by the testator to be a replacement for the specifically devised property.

(6) If not covered by subdivisions (1) through (5) of this subsection, a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established by clear and convincing evidence that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.

(b) In the absence of a finding of the testator's intent to the contrary, if specifically devised property is sold or mortgaged by a conservator or guardian or by an attorney-in-fact acting within the authority of a durable power of attorney for an incapacitated or mentally incompetent principal, or a condemnation award, insurance proceeds, or recovery for injury to the property is paid to a conservator or guardian or to an attorney-in-fact acting within the authority of a durable power of attorney for an incapacitated or mentally incompetent principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(c) The right of a specific devisee under subsection (b) of this section is reduced by any right the devisee has under subsection (a) of this section.

(d) For the purposes of the references in subsection (b) of this section to a conservator or guardian, subsection (b) of this section does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity or mental incompetence ceased and the testator survived the adjudication for at least one year.

(e) For the purposes of the references in subsection (b) of this section to an attorney-in-fact acting within the authority of a durable power of attorney for an incapacitated or mentally incompetent principal, all of the following apply:

(1) Adjudication of incapacity or mental incompetence before death is not necessary.

(2) The acts of an attorney-in-fact within the authority of a durable power of attorney are presumed to be for an incapacitated or mentally incompetent principal."

SECTION 2. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comment to Section 2-606 of the Uniform Probate Code and all explanatory comments of the drafters of this act, as the Revisor may deem appropriate.

SECTION 3. This act is effective when it becomes law and applies to estates of decedents dying on or after that date.